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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,076	10/28/2003	Robert B. Eveleigh	181-0041	4175
28078	7590	11/16/2004	EXAMINER	
MAGINOT, MOORE & BECK BANK ONE CENTER/TOWER 1111 MONUMENT CIRCLE INDIANAPOLIS, IN 46204			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,076

Applicant(s)

EVELEIGH, ROBERT B.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 August 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 28-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 28-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 28, and 31-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4-6, 9, 10, 12-15, 17, 18, 20-23, and 25 of U.S. Patent No. 6,637,668. Although the conflicting claims are not identical, they are not patentably distinct from each other because the addition of language to the claims of the instant application have now made the claims the same scope and are encompassed by the claims that were filed in the parent patented case, and had these claims been included in the parent the restriction requirement would not have been appropriate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kline (496) in view of Yuille. The patent to Kline discloses the recited thermostatically controlled mixing valve comprising a thermostat 26, hot and cold fluid inlets 11,12, a control valve 14, a housing 32 having an inner wall provided with at least one baffle 31 of curved shapes, where there can be more than one baffle provided including up to three, and the baffles can be seen in figures 3-5 to have a surface area about one half the cross sectional area of the housing. The patent to Kline discloses all of the recited structure with the exception of forming the baffles with a leading upstream edge that tapers into the housing and a trailing downstream edge that is wider, having the baffle run 210 degrees from upstream to downstream edges, however such is considered a mere choice of mechanical expedients, and forming the baffle in a paisley shape which is considered an obvious choice of mechanical design to alter the shape. It would have been obvious to one skilled in the art to modify the baffle in Kline to run 210 degrees from upstream to downstream edge as such would only require routine experimentation by one skilled in the art to arrive at optimum working values and such would provide for more mixing if the baffle were turned more. It is considered an obvious choice of mechanical design to form the baffle of any shape as such is merely a choice of mechanical design and it would have been

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obvious to one skilled in the art to modify the baffles in Kline to be of any shape as such would only routine experimentation to change the shape to change the flow profile to meet the needs of the user as such is merely a change in mechanical design requiring only routine experimentation. The patent to Yuille discloses the a baffle for mixing or agitation where the use of such in a mixing dome housing is merely intended use, comprising a leading upstream edge seen in figure 2 having an edge tapering into the housing 4 near the inlet end near 5, a downstream edge wider than the upstream edge and extending further into the interior of the housing, where up to three baffles can be provided, and an arcuate portion connecting the upstream and downstream edges, where the baffle can be seen to have a surface area that is about one half the cross sectional area of the housing as seen in figures 2 and 3. It would have been obvious to one skilled in the art to modify the baffles in Kline to be formed with an upstream edge that tapers into the housing and a downstream edge that is wider than the upstream edge as suggested by Yuille as such would provide for better mixing of the elements and thereby insure for a more mixed output.

Response to Arguments

Applicant's arguments with respect to claims 28-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Stahli, Kline (960), and Spears disclosing state of the art baffles.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

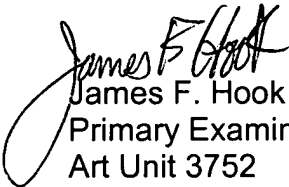
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913 until November 23, 2004 at which point it will change to (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3752

JFH